

****** DISCUSSION DRAFT – NOT FOR RELEASE ******

March 24, 2010

Mr. David Dickerson
Ms. Elaine Stanley
EPA New England, Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Re: New Bedford Harbor Superfund CAD Cell Proposal

Dear Mr. Dickerson and Ms. Stanley,

In response to EPA's presentations on January 28, 2010 and February 25, 2010 regarding the proposed Superfund Confined Aquatic Disposal ("CAD") cell for the New Bedford Harbor cleanup process, the Coalition for Buzzards Bay (the "Coalition") offers the following questions and concerns. While the Coalition shares your goal of a clean harbor as soon as possible, we are cautious that environmental results for future generations not be sacrificed for a quicker time frame. In short, based on the information presented to date, we are concerned that not enough information exists to support moving forward with this disposal option. We look forward to meeting with you to hear more about your rationale for this proposal as well as receive feedback on the concerns outlined in this draft comment letter.

The Coalition is a nonprofit membership organization dedicated to the restoration, protection and sustainable use and enjoyment of Buzzards Bay and its watershed, including the Acushnet River and New Bedford Harbor. We represent more than 6,400 individuals, families, organizations, and businesses in Southeastern Massachusetts, including nearly 300 members in New Bedford. We also hold real estate and conservation easements on substantial parcels of waterfront property along the estuary including the Acushnet Sawmill and Marsh Island.

The EPA Has Failed to Show How The Benefits of the CAD Cell Option Outweigh the Current Disposal Method

Currently, under the Record of Decision ("ROD") for the NB Harbor Superfund Site originally approved by EPA in 1998 and further amended by two Explanation of Significant Differences ("ESD") in 2001 and 2002, PCBs are being removed permanently from the harbor environment. The harbor bottom is being dredged under controlled conditions, the material dewatered and stabilized, and then shipped for permanent burial at an EPA licensed Toxics Substances Control Act facility in Michigan. This landfill meets the highest standards for disposal including a state-of-the-art double composite HDPE liner system, computerized landfill waste tracking system, on-site wastewater treatment facilities for

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landfill leachate and stormwater runoff, air monitoring and extensive leak detection and groundwater monitoring system.

In short, the Wayne Disposal, Inc. landfill in Michigan represents our best available option for permanently separating the large volumes and high concentrations of toxic PCBs left in New Bedford Harbor from humans and the environment. If such a facility were available in our community, we would suggest that it be considered as a better, more affordable alternative to successfully remove these pollutants from the environment. Absent that alternative, the current ROD as amended by the 2001 and 2002 ESDs remains the most appropriate treatment of this toxic material.

There is little doubt that the current disposal method achieves the requisite clean-up for the people of New Bedford, Fairhaven and Acushnet and the harbor environment. Many years of debate went into building community consensus around this decision. Today, people are frustrated with the shortage of funds available for the cleanup and the terrible length of time that the project will take under this current funding stream. It is not the selected remedy, or technology, that is the problem - it is federal dollars.

The Coalition shares these concerns. On the current timeline, another entire generation will grow up dealing with the toxic legacy in New Bedford Harbor. It will continue to threaten public health, poison marine life, and stifle waterfront economic development. Clearly, the timeline is unacceptable.

We are very much eager, therefore, to consider creative alternatives. But what EPA has suggested to date regarding the CAD cell disposal option neither saves enough money or, more importantly time, to justify leaving this contaminated sediment in New Bedford Harbor forever. The information presented to date does not show the CAD as a permanent solution, it may merely be a temporary measure with a longer life.

The Cost and Time Savings Presented by EPA in Support of a CAD Cell Do Not Outweigh the Benefits of 100% Off-Site Disposal

The EPA asserts that a CAD cell would be faster and less costly. In their January 28th presentation, they presented a powerpoint slide illustrating three different annual funding scenarios and compared the time horizon for a clean-up utilizing a CAD cell versus 100% offsite disposal. At an annual funding level of \$15 million, the EPA projects that it will take 35 years to clean-up the harbor while utilizing a CAD cell versus 42 years with 100% offsite disposal. This results in a mere savings of 7 years, which the Coalition does not consider significant considering either option will take more than three decades to complete. At an annual funding level of \$30 million, (a funding level this clean-up has only seen in 2009 thanks to stimulus funds), the EPA projects that it will take 20 years if a CAD cell is utilized versus 27 years if we continue with 100% offsite disposal. Again, only shortening the time horizon for a clean harbor by 7 years. Finally, EPA includes a scenario which suggests at \$80 million a year, an unrealistic annual budget for this project, the clean-up will be completed in 5 years if a CAD cell were to be used, versus 6 years for 100% offsite disposal. The Coalition is not swayed by EPA's assertion that the use of a CAD cell expedites the

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clean-up to a significant extent and maintains that the current method of offsite disposal achieves the most appropriate environmental result.

While it is true that there is a cost savings associated with the incremental savings in time, the Coalition does not feel that this savings outweighs the risk of leaving this level of contamination in the harbor for future generations.

With that said, The Coalition is eager to see the background calculations employed by EPA to support the presented figures.

EPA presented an additional slide providing that under the current funding level of \$15 million per year, the cleanup would be completed in 35 years with the use of a CAD cell and 42 years with 100% offsite removal. The next slide provides that with the use of a CAD cell, the lower harbor cleanup would be complete by 2014 at \$15M. From the map on the same slide, it appears that while the lower harbor cleanup is taking place with the use of a CAD cell, no work will be done on cleaning the upper harbor. EPA must clarify that once the lower harbor cleanup is completed in 2014 (and also address the sediment migrations issue raised below), it will take an additional 31 years to clean the upper harbor, resulting in a completion date of 2045.

Provide Clarification with Respect to the Extent and Impact of Sediment Migration

Based on the information presented, it is unclear how contaminated sediment migrates between the upper and lower harbor before, during and after the cleanup process. On January 28, 2010, in its CAD cell disposal presentation, EPA asserted that “the estimated total PCB loss from the sediments into the overlying CAD cell water is about 9 pounds over the first 3 years (prior to capping).” The same slide explained that “by comparison, current day-to-day migration of PCBs from the upper to the lower harbor is about 9 pounds every 10 days.” While the intent of the current CAD cell proposal is to only place lower PCB level Superfund sediment in the CAD cell, it appears that higher level PCB sediment may also be present in the lower harbor due to migration, and therefore ultimately disposed of in the CAD cell. Furthermore, it appears that additional lower harbor clean-up will be necessary due to the continual migration of PCBs from upper harbor to lower harbor (at a rate of 9 pounds every 10 days) as described in the January 28th EPA presentation.

The Coalition requests that it be provided with the monitoring data EPA has considered in reaching its sediment migration conclusions, including levels of contamination in the upper and lower harbors.

EPA must also explain why prioritizing the lower harbor over the more contaminated upper harbor is the most efficient approach. During the February 25th meeting, EPA stated that ordinarily in a cleanup process they would proceed “worst first” and that the short answer for why the lower harbor is being prioritized is because “we need to coordinate this closely with the port dredging and if we wait too long there might not be any space left.” While this should be one factor that is considered in determining whether the lower harbor should be prioritized, it should not be the sole or most important factor. EPA must provide

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more information about why the lower harbor cleanup is being prioritized and ensure that migration of contamination from the upper harbor will not result in additional lower harbor contamination once the lower harbor cleanup has been completed.

Potential Sea Level Rise and Storm Events Must Be Modeled

While the hurricane barrier protects New Bedford Harbor during storm events it is still necessary to model storms of varying severity to determine whether or not there will be an impact on the CAD cell during these events. At a minimum, a 25-year, 50-year, and 100-year storm should be modeled, both with and without the protection of the hurricane barrier, as well as any impacts that can be expected from modeled sea level rise in the coming decades and centuries. This modeling should account for any impacts during disposal and prior to the cap to being in place as well as any long-term impacts once the cap is installed. When asked about storm modeling during the February 25th meeting, EPA's response was that storm modeling had not been conducted for this site but that "generically, CAD cells are safe in that type of scenario." The unique characteristics of the harbor along with the scope of the Superfund project make it imperative that modeling specific to New Bedford is conducted.

EPA went on to state that during a storm when there are higher wind driven currents, the first sediments that will be disrupted will be the existing bed sediments. Since, according to EPA, the CAD cell will be a concave depression, even with the cap in place, that will act as a trap for disturbed sediments, they do not believe that it could be damaged during a storm event. This statement alone is not enough to convince the Coalition that future storm surges will not affect the cap. EPA must perform a thorough storm analysis in order to ensure that the cap will not be disturbed under any potential future storm conditions.

EPA Must Document Where this Type of Disposal has been Used on a Similar Scale.

The City of New Bedford has been using CAD cells for disposal of navigational dredging sediment that, according to EPA, is similar in contamination levels to the sediment that would be placed in the Superfund CAD cell. EPA has been relying on the success of the navigational CAD cells to support the future use of the Superfund CAD cells. However, EPA must present evidence of other instances where the same level of contamination and volume of sediment has been disposed of in a CAD cell. With the increased level of contamination, as well as the increased amount of sediment, additional modeling and monitoring must be incorporated into the process.

Long-Term Risks and Limitations on Harbor Use Must Be Identified

Finally, the Coalition is concerned about the long-term risks and limitations that will result from a Superfund CAD cell. While EPA stated that these areas will be identified on navigational charts as areas that must be avoided; there is a risk that they could be accidentally disturbed. EPA must demonstrate how a three foot sand cap will protect the contents of the CAD cell from events such as an anchor being dragged, or a mooring coming

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loose, or a freighter drifting off course and grounding in the CAD cell. A CAD cell will also restrict any future navigational dredging in these areas.

During the February 25, 2010 presentation, it was also stated that the CAD cell will be located below the biological layer of the harbor and therefore there will not be any bioaccumulation through the food chain. The Coalition would like EPA to provide any studies or models that support this assertion. It is also important for EPA to explain what future uses will be allowed and how the community will be protected once the cleanup is complete.

Conclusion

The City of New Bedford and its residents have waited over 30 years for a clean harbor. We must ensure that once the harbor is clean, it remains clean for generations to come. While we want this accomplished as soon as possible, it must be completed in a manner that will ensure a successful and complete cleanup. We would like to schedule a time to meet with you to discuss these questions and concerns and we look forward to working with EPA and the City to develop the most efficient and effective disposal option for the remainder of the New Bedford Harbor Superfund cleanup.

Sincerely,

Mark Rasmussen
President/Baykeeper

Cc: Curt Spalding, Administrator US Environmental Protection Agency, Region 1
Mayor Scott Lang
New Bedford City Council
Ms. Kristin Decas, New Bedford Harbor Development Commission
Fairhaven Board of Selectmen
Acushnet Board of Selectmen
Ms. Jeanethe Falvey, EPA